

### **REMARKS**

In the Office Action mailed December 21, 2001, the Examiner rejected claims 1-23. The Examiner rejected claims 5 and 15 under 35 U.S.C. §112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner also rejected claims 1, 3-5, 10, 12-15, 17 and 22 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,250,771 to Sharrah et al. ("Sharrah"). Also, the Examiner rejected claims 2, 11, 16 and 23 under 35 U.S.C. §103(a) as being unpatentable over Sharrah as applied to claims 1 and 12 above, and further in view of U.S. Patent No. 6,095,661 to Lebens et al. ("Lebens").

The Examiner also indicated allowable subject matter in the pending claims. The Examiner objected to claims 6-9 and 18-21 as being dependent upon a rejected base claim, but indicated that the claims would be allowable if rewritten in independent form to including all of the limitations of the base claim and any intervening claims.

In view of the remarks set forth herein, Applicants respectfully submit that all pending claims, claims 1-24, are in condition for allowance.

#### **A. Rejection Under §112, second paragraph**

The Examiner rejected claims 5 and 15 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner argued that the limitation of claims 5 and 15, namely, "and the LED serving as the light source is selectively movable" in claims 2-3, has insufficient antecedent basis for the limitation in the claim. The Examiner further argued that Applicants specify an "LED array" that is selectively moveable in the specification.

Applicants submit that claims 5 and 15 have been claimed with sufficient antecedent basis in the specification, and that the claims are in condition for allowance as written. With reference to the application at page 5, lines 29-31, "[a]lternatively, focus and dispersion may be adjusted by fixing the optical assembly and allowing the LED array to move or rotate." (Emphasis added). As defined in the specification, in particular at page 3, lines 1-2, the LED array consists of at least one

LED. Applicants submit that one of ordinary skill in the art would understand from the specification that the LED array consists of at least one LED, and that the LED can be selectively moveable. Applicants submit that the claims as written are particularly pointed out and distinctly claimed as would be understood by one of ordinary skill in the art.

Therefore, Applicants respectfully request that the Examiner remove all rejections to claims 5 and 15 under 35 U.S.C. §112, second paragraph, and allow the claims as written.

**B. Rejection Under §102(e)**

The Examiner rejected claims 1, 3-5, 10, 12-15, 17 and 22 under 35 U.S.C. §102(e) as being anticipated by Sharrah. The Examiner argued that Sharrah discloses a housing; at least one light emitting diode (LED) mounted within the housing generating an LED beam and serving as a light source for the flashlight; and a reflector extending from one end of the housing for focusing and dispersing the LED to a desired light contour (Fig. 2), and with the housing enclosing a series of batteries operating as the power source for the flashlight. Also, the Examiner stated that Sharrah discloses a reflector that is selectively adjustable for focusing and dispersing the LED beam as desired, that the reflector is fixed and the LED serving as the light source is selectively moveable for focusing and dispersing the LED beam as desired. The Examiner argued that if the reflector is not moved, and the entire lighting apparatus is, the LED serving as the light source is selectively moveable. In addition, the Examiner stated that Sharrah discloses at least one light emitting diode (LED) mounted within the housing generating a mechanically adjustable LED beam and serving as a light source, a reflector extending from an end of the housing for focusing and dispersing the at least one LED to a desired light contour, and an electronic current regulator enclosed by the housing for allowing the LED beam to remain at a constant and desired light, which the Examiner argued was inherent.

Applicants submit that the presently claimed subject matter is not anticipated by Sharrah. Applicants submit that the claims as now written include subject matter indicated as allowable by the Examiner. As Sharrah does not include each and every element of the presently claimed subject matter, it cannot be said that Sharrah anticipates the presently claimed subject matter.

As such, Applicants respectfully request that the Examiner remove all rejections to claims 1, 3-5, 10, 12-15, 17 and 22 under 35 U.S.C. §102(e) and allow the claims as now written.

**C. Rejection Under §103(a)**

The Examiner also rejected claims 2, 11, 16 and 23 under 35 U.S.C. §103(a) as being unpatentable over Sharrah as applied to claims 1 and 12 above, and further in view of Lebens. The Examiner stated that Lebens discloses a plurality of LEDs arranged concentrically around a single LED thereby forming a substantially circular configuration and a dynamic pulse control system. The Examiner argued that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a plurality of LEDs arranged concentrically around a single LED thereby forming a substantially circular configuration and a dynamic control system since such structure and components for use in an LED lighting systems are well known in the art.

Applicants submit that the presently claimed subject matter is not obvious in view of the references cited by the Examiner. Specifically, Applicants claim subject matter that is indicated by the Examiner as being allowable. Thus, in view of the indication by the Examiner of allowable subject matter, Applicants submit that the claims as now written are not rendered unpatentable over Sharrah in view of Lebens.

Therefore, Applicants respectfully request that the Examiner remove all rejections to claims 2, 11, 16 and 23 under 35 U.S.C. §103(a) and allow the claims as now written.

**D. Conclusion**


In view of the above remarks, Applicants respectfully submit that the rejections set forth in the Office Action of December 21, 2001 have been overcome. Accordingly, Applicants respectfully submit that claims 1-23 are in condition for

allowance. Withdrawal of the rejections and early notification of allowability are earnestly solicited. Should any issues remain, the Examiner is encouraged to contact the undersigned to resolve any such issues.

Respectfully submitted,

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Attachment: Version with Markings to Show Changes Made

**Version with Markings to Show Changes Made**

**In the Claims:**

Claims 6 and 18 have been canceled.

Claims 1, 7-9, 12, 19-21 have been amended as follows:

1. (Twice Amended) A flashlight assembly comprising:  
a housing;  
at least one light emitting diode (LED) mounted within the housing generating an LED beam and serving as a light source for the flashlight;  
[and]  
a reflector extending from an end of the housing for focusing and dispersing the LED beam to a desired light contour; and  
an adjustable switch coupled to a variable resistor for controlling the level of optical output.
7. (Amended) The flashlight assembly according to claim [6] 1, wherein the switch is adapted to selectively turn on and off any select number of the at least one LED, thereby allowing a user to choose from several different levels of illumination.
8. (Amended) The flashlight assembly according to claim [6] 1, wherein the switch operates as a step level variable control having at least two distinct levels of illumination.
9. (Amended) The flashlight assembly according to claim [6] 1, wherein the switch operates as a rheostat having continuous variable control thereby allowing selective desired levels of illumination.

12. (Twice Amended) A flashlight assembly comprising:  
a housing; [and]  
at least one light emitting diode (LED) mounted within the  
housing generating a mechanically adjustable LED beam and serving as a light  
source; and  
an adjustable switch coupled to a variable resistor for controlling  
the level of optical output.

19. (Amended) The flashlight assembly according to claim [18] 12,  
wherein the switch is adapted to selectively turn on and off any select number of the  
at least one LED, thereby allowing a user to choose from several different levels of  
illumination.

20. (Amended) The flashlight assembly according to claim [18] 12,  
wherein the switch operates as a step level variable control having at least two  
distinct levels of illumination.

21. (Amended) The flashlight assembly according to claim [18] 12,  
wherein the switch operates as a rheostat having continuous variable control thereby  
allowing selective levels of illumination.